

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawaii 96813

April 25, 2008

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

PSF No.:08od-019

OAHU

Amendment of Grant of Non-Exclusive Easement S-5668 to Evershine II, L.P. for
Channel, Concrete Surge Break or Breakwater, and Seawall and Fill Purposes;
Portlock, Honolulu, Oahu; Tax Map Key: (1) 3-9-026: 044, 045, & 048 seaward.

APPLICANT:

Evershine II, L.P., a California limited partnership, whose mailing address is 19770
Stevens Creek Boulevard, Cupertino, California 95014.

LEGAL REFERENCE:

Section 171-13, 53(c), Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government land situated at Maunalua Bay, Honolulu, Oahu identified by Tax
Map Key: (1) 3-9-026:044, 045, & 048 seaward, as shown on the attached map labeled
Exhibit A.

AREA:

330 square feet (surge break) and 54 square feet (step); more or less.

ZONING:

State Land Use District: Conservation

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act

DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: YES ____ NO
X

CURRENT USE STATUS & CHARACTER OF USE:

Encumbered by Grant of Non-Exclusive Easement S-5668, Evershine II, L.P., Grantee, for "Right, privilege, and authority to construct, use, maintain, and repair the channel, concrete surge break or breakwater, and seawall and fill easements" purposes.

PROPOSED CHARACTER OF USE:

"Right, privilege, and authority to construct, use, maintain, and repair the channel, concrete surge break or breakwater, seawall, step and fill easements." (amendment underlined)

CONSIDERATION:

One-time payment to be determined by staff appraisal establishing fair market rent, subject to review and approval by the Chairperson. See Remarks.

EASEMENT TERM:

The subject request is an amendment to Grant of Non-Exclusive Easement S-5668. The easement term will not be changed, i.e. October 6, 2003 to October 5, 2058 (55 years)

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

The subject surge break and step appeared to be built before 1974, prior to the enactment of the EIS law and this action is therefore exempt from Ch. 343.

DCCA VERIFICATION:

Not applicable. The Applicant as a landowner is not required to register with DCCA.

APPLICANT REQUIREMENTS:

Applicant shall be required to provide survey maps and descriptions according to State DAGS standards and at Applicant's own cost.

BACKGROUND:

On November 16, 2001, under agenda item D-13, the Board authorized the issuance of a 55-year non-exclusive easement to Evershine VIII, L.P. for channel, concrete surge break or breakwater, and seawall and fill purposes. Subsequently, "Grant of Non-Exclusive Easement No. S-5668" was issued in October 2003, which covers the encroachment abutting only Parcel 44.

In 2004, Evershine VIII, L.P. conveyed the subject private properties to Evershine II, L.P. (Applicant). On January 14, 2005, under agenda item D-8, the Board consented to the assignment of the subject easement from Evershine VIII, L.P. to the Applicant.

Recently, the Applicant submitted an application for shoreline certification for the subject four (4) private properties. Staff noticed additional encroachment areas including seawall (330 sq. ft.) and steps (54 sq. ft.) abut Parcels 45 and 48 respectively. The additional areas were not included in the 2003 application. A copy of the recent shoreline survey map is attached as Exhibit B.

Pursuant to the rules governing the shoreline certification process, the said application was rejected. The Applicant wants to resolve the additional encroachment issue by requesting the Board agrees to add the additional area into Easement S-5668.

REMARKS:

The Applicant submitted photos proving that the additional areas and the area under Easement S-5668 exist during the same time. Staff agrees that the additional area as shown on Exhibit B should have been included in the original Easement 5668 because it is a continuation of the same structure. Staff has no objections to the subject request.

Comments from other agencies

Office of Conservation and Coastal Lands, Board of Water Supply, and Commission on Water Resources have no objections to the request.

Department of Facility Maintenance has no objections provided the subject amendment will not have an adverse effect on the maintenance and repairs to the storm drainage facilities within the City's storm Drain Easement "4" through TMK: 3-9-026:048 and the discharge of storm drain water into Maunalua Bay. The structures exist at the subject location for a long time, and the proposed amendment is to legitimize the structures.

Department of Health, Division of Aquatic Resources, State Historic Preservation Division, Department of Planning and Permitting, Department of Parks and Recreation, and Office of Hawaiian Affairs have not responded as of the suspense date.

Consideration of the additional area

Since the additional areas exist at the same time as the area in Easement S-5668, staff recommends the Board authorize using the unit rate charged for the encroachment in Easement S-5668 to be used for the additional area. The additional consideration is subject to review and approval by the Chairperson.

Collection of deposit to facilitate shoreline certification

Further, staff is recommending that the Board authorize the acceptance of a deposit from the Applicant. This will allow the Applicant to process the shoreline certification which is needed for the Applicant's to pursue the development of its properties. As standard

practice, staff does not allow a shoreline certification to be processed until all encroachments have been resolved through the full execution of legal documents or removal of the encroachments. In the past, shoreline certifications or other approvals were released prior to full document execution and staff found it difficult to compel the Applicant to execute the documents and make payment. Therefore, staff offers this alternative method of collecting a deposit to enable the Applicant to pursue permits and approvals with less risk that the Applicant will not execute the documents. While such a deposit does not completely ensure that the documents will be executed, it does show a strong commitment by the Applicant to enter into an agreement with the State.

The Appraisal Section has cursorily estimated the easement consideration to be \$2,120. With fees, the total estimated deposit amount is \$2,175. The actual consideration will be determined upon finalization of the map by State Survey Division. Upon execution of the legal documents, this deposit will be applied towards the consideration amount and other applicable charges. If the deposit amount is more than the total, then the Applicant shall be reimbursed any difference (and vice versa). If the Applicant does not execute the document, the Applicant shall be required to remove the encroachments to the satisfaction of the Department or to forfeit the deposit in full which shall be used to remove the encroachment.

Further, staff recommends the Board authorize the addition of a condition which allows Easement S-5668 run with the abutting private properties. It is a standard condition for easement issued recently.

There are no other pertinent issues or concerns.

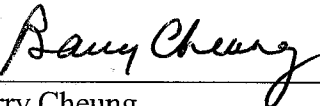
RECOMMENDATION: That the Board:

1. Authorize the subject requests to be applicable in the event of a change in the ownership of the abutting parcels described as Tax Map Key: (1) 3-9-026: seaward of 044, 045, & 048, provided the succeeding owner has not had a lease, permit, easement or other disposition of State lands terminated within the last five (5) years due to non-compliance with such terms and conditions.
2. Subject to the Applicant fulfilling all of the Applicant requirements listed above, authorize the amendment of Grant of Non-Exclusive Easement S-5668 by:
 - A. Replacing the Character of Use with "Right, privilege, and authority to construct, use, maintain, and repair the channel, concrete surge break or breakwater, seawall, step and fill easement."
 - B. Adding 384 square feet to the easement area.
 - C. Inserting the following condition: "The easement shall run with the

land and shall inure to the benefit of the real property described as Tax Map Key: (1) 3-9-026: seaward of 044, 045, & 048, provided however: (1) it is specifically understood and agreed that the easement shall immediately cease to run with the land upon the expiration or other termination or abandonment of the easement; and (2) if and when the easement is sold, assigned, conveyed, or otherwise transferred, the Grantee shall notify the Grantee's successors or assigns of the insurance requirement in writing, separate and apart from this easement document."

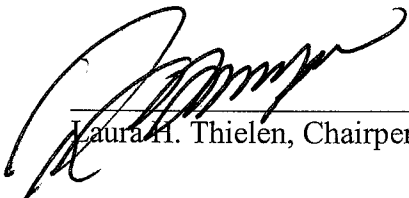
3. Authorize the Department to accept a deposit in the amount of \$2,175 from the Applicant as an estimated easement consideration pursuant to the conditions set forth in the Remarks section above.

Respectfully Submitted,




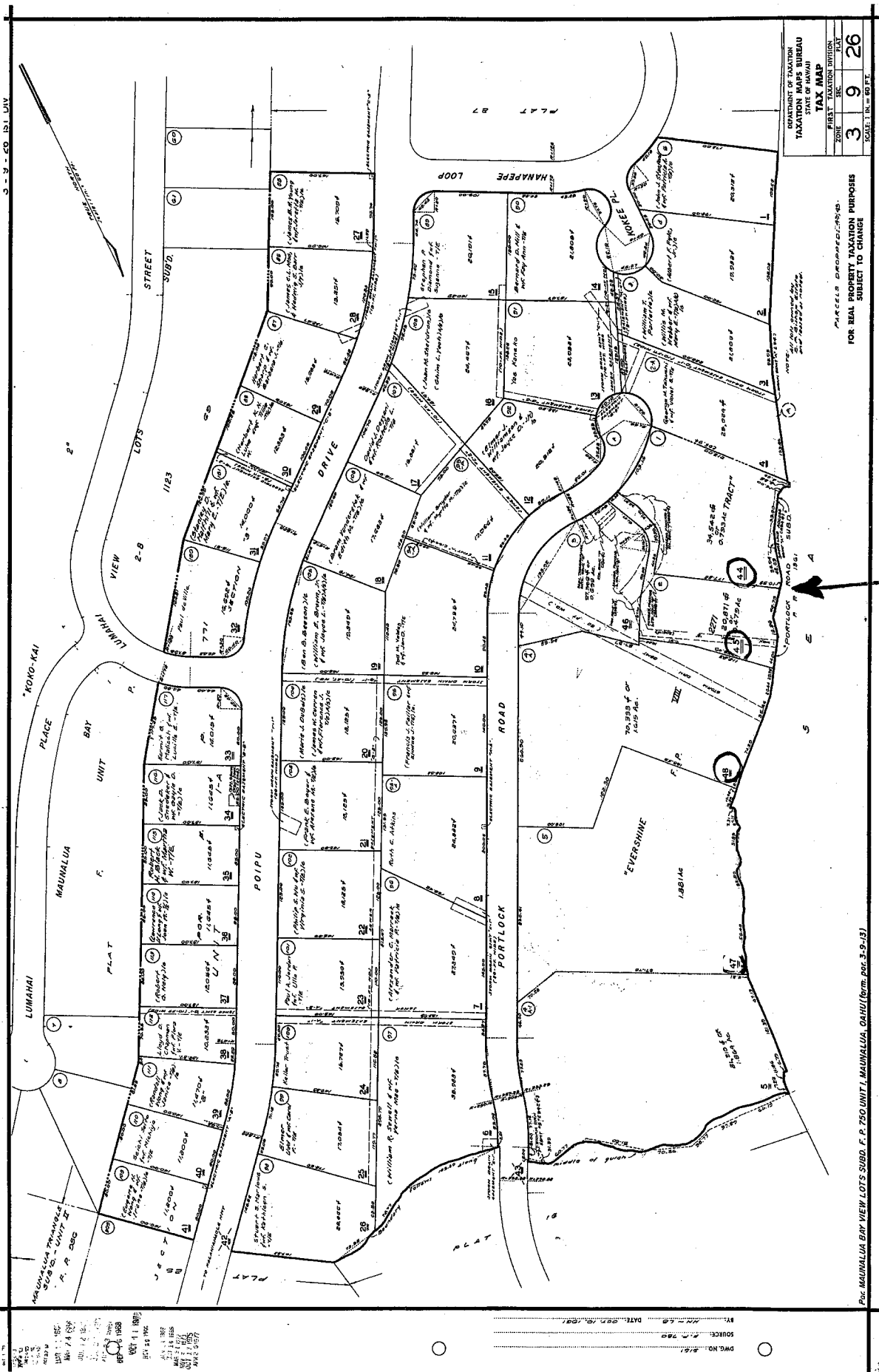
Barry Cheung
District Land Agent

APPROVED FOR SUBMITTAL:

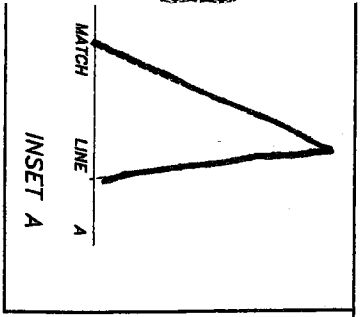


Laura H. Thielen, Chairperson





Subject Location



EXCLUSIVE CONCRETE BRAKE/
WATER EASEMENT
23.436'

NON-EXCLUSIVE CHANNEL EASEMENT
(C.S.F. 23.436)

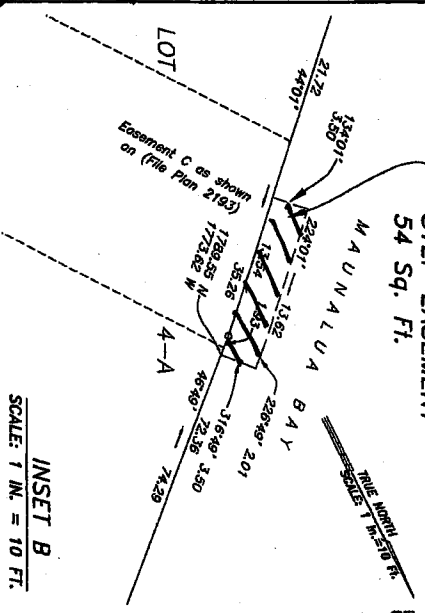
MAUNALUA
EASEMENT
55668

NON-EXCLUSIVE SEAWALL
AND FILL EASEMENT
(C.S.F. 23.437)

Additional Encroachment
Areas
NON-EXCLUSIVE SURGE
BREAK EASEMENT
350 Sq. Ft.

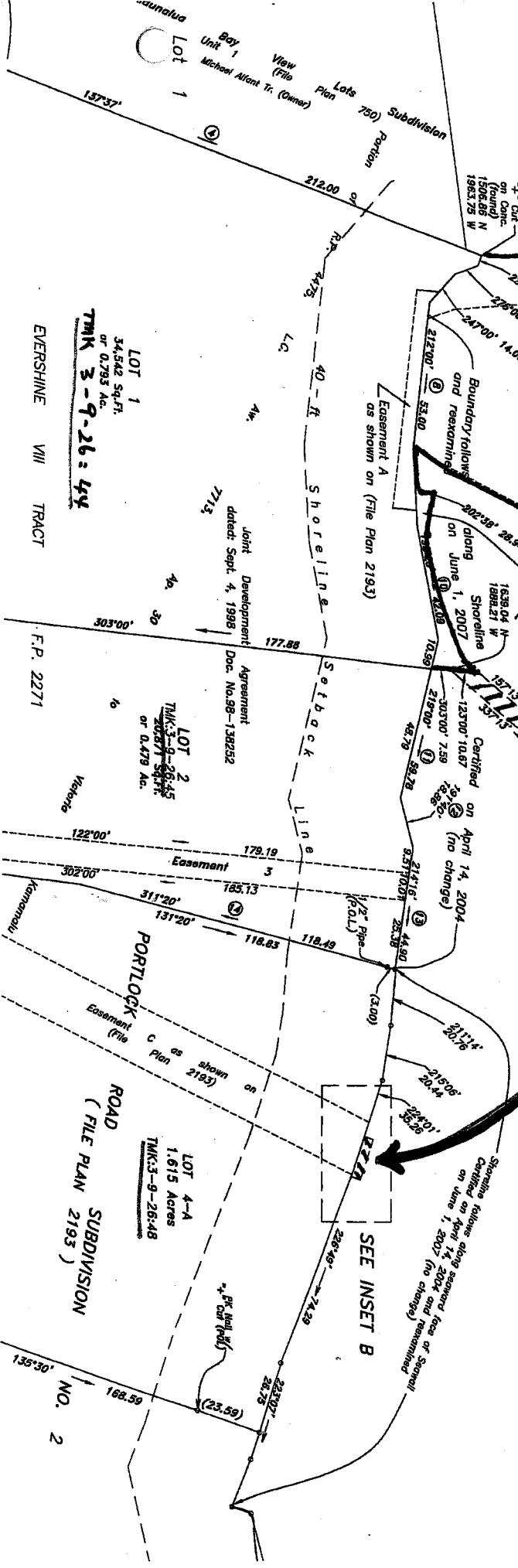
TRUE NORTH = 30° F.T.
SCALE: 1 in. = 30 F.T.

NON-EXCLUSIVE CONCRETE
STEP EASEMENT
54 Sq. Ft.



INSET B
SCALE: 1 in. = 10 F.T.

EXHIBIT "B"



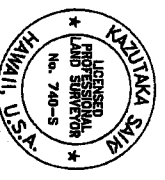
LOT 1
34,542 Sq. Ft.
or 0.793 Ac.
TMK 3-9-26 = 444

LOT 4-A
1.615 Acres
TMK 3-9-26-48

NON-EXCLUSIVE
SURGE BREAK AND CONCRETE STEP EASEMENT

Affecting the Submerged Lands of Maunaloa Bay
fronting Lot 2 of Evershine VIII Tract, File Plan 2271
and Lot 4-A of the Subdivision of Lot 4 of the
Portlock Road Subdivision No. 2, File Plan 2193

At Maunaloa, Honolulu, Oahu, Hawaii



The work was done by me
or under my supervision
KAZUTAKA SAKI
Licensed Professional
Land Surveyor
Certificate No. 740-S

7: Evershine VIII L.P.
C/O Evershine Group
18770 Stevens Creek Blvd.
Cupertino, CA 95014

SAM O. HIROTA, INC.

Job No. 071310
F.S. No. 112572
129023